IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 914 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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BANK OF BARODA,A BODY CORPORATE CONSTITUTED UNDER THE BANK IN - Applicant(s)

Versus

CENTRAL BUREAU OF INVESTIGATION (CBI) & 2 - Respondent(s)

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Appearance :
DR MAHESH THAKAR for Applicant(s) : 1,MR KISHORKANT PATHAK for Applicant(s) : 1,
MR YN RAVANI for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 2,
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/09/2007

ORAL JUDGMENT

1. ***Rule***. Mr.Y.N.Ravani, learned Advocate waives service of rule on behalf of respondent No.1 – C.B.I. Mr.K.T.Dave, learned APP

waives service of rule on behalf of respondent No.3. With the consent of the learned Advocates appearing on behalf of the respective parties, the matter is taken for final hearing today.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner- Bank of Baroda- original complainant / informant has prayed for an appropriate order directing respondent No.1- C.B.I. to investigate various offences committed by Satkar Fertilizers, Shailesh Natwarlal Shah, Shri Rameshchandra Narayan Parwal, Usha Engineering Works, Shreyas Equipments Pvt. Ltd., Shri Krishna G.Somani, Govind G.Somani, Ushaben G.Bhandari, Hitesh G.Somani, Mamta Jhavar, Bhavna H.Lahoti, Satkar Cement Co. Ltd. and other persons purportedly acting as suppliers/ purchasers materials of machineries and the invocies, book, debts, the pollution control board permission dated 10.04.2003, Ministry of Fertilizers letter dated 04.07.2002, the sale deeds dated 20.10.2002 deposited with the Bank, the transactions fraudulently made by Dilip Gendalal Somani, Bhavnaben Dilipbhai Somani, Mamtaben Govindbhai Somani and others in the transactions relating to equitable mortgage / execution of sale deed and leasing back of the property by the mortgagor to their respective husband / relative and all other connected transactions covered under the criminal complaint under reference in the petition and the offences revealed subsequently involving bank funds of Rs.2.95

Crores and the securities created in favour of the Bank on the basis of fake / suspicious documents and other fraudulent acts of inducing the Bank to lend and disburse the money which it would not have lent had the correct position, within the knowledge of such persons been disclosed to the Bank.

3. It is the case on behalf of the petitioner that the petitioner is a Nationalized Bank and earlier filed criminal case No. 281 of 2004 in connection with various transactions in the account of Satkar Fertilizers and others for the purpose of huge amount of Rs.2.95 Crores and the said complaint came to be filed before the learned J.M.F.C., Vadodara against the persons named in the said complaint under Sections 403, 405, 406, 420, 463, 465, 468, 471 of the Indian Penal Code i.e. with regard to dishonest misappropriation of property, criminal breach of trust, cheating, forgery, making a false documents, forgery for purpose of cheating, using as genuine a forged document. That the learned JMFC, Vadodara took the cognizance and issued process against the accused persons. It is the case on behalf of the petitioner – Bank that subsequently additional facts / aspects / offences have been involved and in view of Central Vigilance Commission (CVC) guidelines the Bank approached CBI to investigate the matter. However, the CBI advised the petitioner – Bank to withdraw the said complaint. It is submitted that

the petitioner – Bank also submitted application below Exh.29 before the learned Magistrate in the said complaint seeking permission for CBI investigation. The learned Magistrate rejected the said application. It is the case on behalf of the petitioner that the amount of scam involved is Rs.2.95 Crores, and as per CVC guidelines case relating to bank fraud amounting to more than Rs.1 crores shall be investigated by the CBI Economic Branch. However, CBI has advised that it can investigate the said offence only after withdrawal of the aforesaid criminal case. However, it is apprehended by the Bank that if the criminal complaint / case pending in the trial Court is withdrawn, same would tantamount to acquittal of accused persons. Therefore, it is submitted that insistence on the part of the CBI to withdraw the aforesaid criminal case is not justified. Even learned Trial Court has committed an error in rejected the application below Exh. 29. It is submitted that even the application submitted by the accused persons below Exh.23 to discharge is also rejected by the learned trial Court. Mr.Thakar, learned Advocate appearing on behalf of the petitioner – Bank has heavily relied upon the decision of the learned Single Jude of this Court dated 20.12.2005 in the case of Bank of Baroda v/s. Central Bureau of Investigation rendered in Special Criminal Application No. 1699 of 2005 in support of his prayer to direct the CBI to investigate the offence.

4. Mr.Y.N.Ravani, learned Advocate appearing on behalf of CBI has submitted that as one criminal case is already pending, registering of another criminal complaint by the CBI and to investigate the same would tantamount to second complaint for the same offence, therefore, initially CBI advised the petitioner-Bank to withdraw the aforesaid criminal case pending in the trial Court. However, apprehension on the part of the petitioner that if the aforesaid criminal case is withdrawn, it might tantamount to acquittal of the accused persons, is well founded. He has further submitted that CBI has no objection in investigating the offence and the complaint in question submitted by the petitioner and also submitted that suitable order be passed even considering the decision of the learned Single Judge of this Court in Special Criminal Application No. 1699 of 2005.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. At the outset, it is required to be noted that amount involved in the aforesaid scam and offence is Rs.2.95 Crores and therefore, considering the Office Order issued by the CVC and the guidelines with regard to fraud cases relating to the Bank, it will be appropriate and/or such cases can be investigated by the CBI – Banking Securities & Fraud

Cell (BS&FC). It is also required to be noted at this stage, even CBI has also submitted that they have no objection in investigating the offence and the complaint submitted by the petitioner. However, they have advised the petitioner-Bank to withdraw the Criminal Case No.271 of 2004. However, it is apprehended on behalf of the petitioner that if the aforesaid criminal case is withdrawn, it would tantamount to acquittal of the accused persons and such apprehension prima-facie is well founded.

7. Under the circumstances and considering the guidelines of CVC and considering the decision of the learned Single Judge of this Court in Special Criminal Application No.1699 of 2005, which is reported to be confirmed by the Hon'ble Supreme Court, it is hereby ordered that the CBI shall register the complaint submitted by the petitioner- Bank and investigate the offence as to the involvement of the accused persons or any other persons who may be found involved in the entire scam and defalcations. If it reveals that a private complaint resulted into criminal case, ultimately is found to be a criminal case in relation to the scam that may be investigated by CBI, then that criminal case may be dealt with and tried with the criminal case instituted on the report of the CBI in view of the section 210 of the Cr.P.C. It is also necessary to order that till CBI completes the investigation and submits its report in the competent Court, learned JMFC shall not proceed

further in the proceedings of Criminal Case No.281 of 2004. This being a old case, CBI to investigate the crime and complaint submitted by the petitioner-Bank as expeditiously as possible.

With these, present present petition is disposed of. Rule is made absolute to the aforesaid extent. Direct service is permitted.

[M.R.Shah, J.]

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